

CIVIL ORDER BOOK

0135 488

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

CRYSTAL A. HATFIELD,

Plaintiff,

v.

Civil Action No.: 05-C-157
Chief Judge Michael Thornsbury

HEALTH MANAGEMENT ASSOCIATES OF WEST VIRGINIA, INC., d/b/a WILLIAMSON MEMORIAL HOSPITAL, and JACQUELINE ATKINS, individually, and CASSIE BALL, individually,

Defendants.

FILED
CIRCUIT COURT
MINGO COUNTY, WV
2007 FEB - 7 A 9:12
ASST. CLERK
GRANT PREECE
MINGO COUNTY, WV

FINAL ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On the 5th day of February 2007 this matter came before the Court pursuant to a hearing on Defendants' Motion for Summary Judgment. The Plaintiff, Crystal Hatfield, appeared by counsel, Jeffrey Mehalic; the Defendants, Health Management Associates of West Virginia, Inc. d/b/a/ Williamson Memorial Hospital, Jacqueline Atkins, and Cassie Ball appeared by counsel, Debra Nelson. The Court has considered the instant Motion, the arguments of counsel, the relevant legal authorities, and the complete record in this case and GRANTS Defendant's Motion for Summary Judgment based upon the findings of fact and conclusions of law contained herein, to wit:

FINDINGS OF FACT

- 1. The case arises out of the termination of the Plaintiff, Crystal Hatfield's employment with Williamson Memorial Hospital ("WMH"), by the Defendants that occurred on April 14, 2005.

ENTERED IN CIVIL ORDER BOOK NO. 135
PAGE 488 DAY OF February 2007
Grant Preece Circuit Court Clerk

CIVIL ORDER **0135** **189**
BOOK

2. On July 28, 2006 the Court entered an Order granting summary to the Defendants on Counts I, II and III of the Plaintiff's Amended Complaint. Specifically, the Court found that the Plaintiff was an at-will employee during her employment with WMH between April 11 and April 14, 2005. The remaining Counts IV and V in this civil action pertain to the Plaintiff's claims for tortious interference with contract and intentional infliction of emotional distress.
3. On April 14, 2005 Defendant, Jacqueline Atkins was WMH's Associate Executive Director of Patient Care Services. Adkins deposition, page 5. Defendant Cassie Ball was WMH's Chief Financial Officer. Ball deposition, page 9. During the 2005 calendar year, a hiring freeze was in effect at WMH that required corporate approval any hiring. Ball deposition, pages 18 and 19. In early 2005, Tina Jackson, was the Payroll and Benefits Coordinator at WMH, in the Human Resources Department. Jackson deposition, page 6. In January 2005, Jackson left the Human Resources Department because her payroll duties were transferred to the accounting department. Id. pages 7 and 8. Thereafter, Rob Channell, WMH's Director of Human Resources, became looking for someone to replace Jackson's duties as benefits coordinator. Channell deposition, page 9. Once Channell realized that he could not justify a full time position for a benefits coordinator, he consulted with Gregg Moore, WMH's Plant Operations Director, who wanted help with filing and general paperwork in his department. Id. page 21. Channell and Moore then created a position of "Benefit and Special Projects Coordinator" and requested approval from WMH's CEO, to fill that position. Id. In response, the hospital's Interim Chief Executive Officer, Robert Mahaffey told Channell he could begin looking for someone to fill the position, while WMH sought corporate approval for the position. Id. at 18-19.
4. Channell, Moore, Mahaffey and Ball recommended to corporate management that WMH hire a special project coordinator "to work between Human Resources and Maintenance doing

CIVIL ORDER
BOOK

0135 490

- filing, shredding, typing, etc.” See, Employee Exception Request. Ball, as CFO, approved a recommended pay rate of \$7.50 per hour, for an annualized cost of \$7,800.00 for the positions. Id. Ball then forwarded the request to Mike Gingras, Director of Operations-Finance, Mid-Atlantic Division for Health Management Associates (“HMA”), the parent corporation of WMH. Ball deposition, pages 18 and 19, Gingras deposition pages 8 and 13.
5. While waiting to hear from corporate regarding whether or not the position would be approved, Channell posted the position at WMH. Channell deposition pages 18 and 19. As a result of the posting, several WMH employees inquired of Channell regarding the specifics of the position, including the hours, job duties, and the pay scale. Id. pp. 32-33. Channell told the employees that the position would pay in the range of \$7.00 to \$9.00 per hour. Id. page 129. Many of the individuals who discussed the position with Channell testified that they did not pursue filling out an, because the pay scale was insufficient for their needs or would result in a decrease in their rate of pay. Ferrell deposition pages 7 and 9; Hall deposition pages 10-12. The job description that Channel prepared, stated that at a minimum, a two-year degree was required for eligibility for the position. See Job Description; Channell deposition page 75.
6. One WMH employee, Melinda Edwards, testified that she became interested in the position, due to the Monday through Friday day shift work hours. Edwards deposition page 66. Edwards testified in her deposition that she submitted an application to Channell, after which Channel, along with Gregg Moore, interviewed Edwards for the position. Id. 12. Because Edwards was a few credit hours short of the required two-year degree, Edwards testified that Channell and Moore informed Edwards that they would check with the hospital’s CEO as to whether that requirement could be waived, due to the fact that Edwards was experienced and had acquired several hours towards her degree. Id. at 8, 16-17.

CIVIL ORDER
BOOK

0135 491

7. Another WMH employee, Roberta Varney, testified that she discussed the position with Channell. Varney deposition, page 9. Varney testified that Channell told her that she would likely have to take a cut in pay from her then-current wage of \$10 or \$11 per hour, and that Channell informed her that he would check with WMH's CEO, to try and make the wage cut as minimal as possible. Id. page 11. Varney testified that she remained interested in the position and was waiting for Channell to provide specific information about her pay cut, when she learned that Hatfield had been fired for the position. Id. page 12.
8. Moore testified that following Edwards' interview and the discussions Channell held informally with other WMH employees about the position for Benefits and Special Project Coordinator, Moore suggested his son's fiancé, Crystal Hatfield, for the position. Moore deposition, page 10. Hatfield testified that at that time she was employed in Charleston, West Virginia, with an annual salary of approximately \$21,000 and that she provided Moore with her resume, that Moore took to Channell. Hatfield deposition, page 16. Hatfield testified that shortly thereafter Channell and Moore interviewed her for the position. Hatfield deposition, pages 24-26.
9. Channell testified that Hatfield provided him with a copy of her college transcript, but that he incorrectly interpreted Hatfield's certificate from the National Institute of Technology as a college degree. Channell deposition, pages 29-30. Atkins testified that although Hatfield's transcript indicated that she had completed 42 college credit hours, a review of her transcript revealed that Hatfield had only completed 18 hours. Atkins deposition, page 33.
10. Mahaffey, Interim CEO of WMH, testified that following the interview with Channell and Moore, Channell asked him to interview Hatfield and because it was Channell's responsibility to present only qualified candidates to him to interview, he did not independently review Hatfield's qualifications. Mahaffey deposition, 12. Mahaffey testified

CIVIL ORDER
BOOK

0135492

that Channell asked him to approve an annual salary of \$29,120.00 for Hatfield to fill the position and that after Channell informed him that the salary presented to him was within the pay range for the position, he gave his approval. Id. at 14.¹ Immediately thereafter, the position was offered to Ms. Hatfield at an annual salary of \$29,120.00, which Ms. Hatfield accepted. See, Letter to Hatfield dated March 28, 2005; Hatfield deposition, page 44. Hatfield testified that she was informed that she would need to complete and pass a physical examination, including a drug screen, before her employment could be confirmed. Hatfield deposition, page 82. Channell testified that before Hatfield's references were checked and before the test results were known, he told Hatfield to begin her employment at WMH, beginning on April 11, 2005. Channell deposition, pages 38 and 40.

11. Mahaffey testified that he left his position as Interim CEO with WMH on April 1, 2005. Mahaffey deposition, page 8. Atkins, Ball, and Campbell testified that because HMA has not yet appointed an on-site CEO to replace Mahaffey, Scott Campbell, Vice President of Operations for HMA's Mid-Atlantic Division, assigned Atkins and Ball with the responsibility of running WMH's day-to-day operations. Atkins deposition, page 14; Ball deposition, pages 28-29; Campbell deposition pages 8 and 27. Atkins testified that on April 11, 2005 she was acting within the scope of her employment received Hatfield's Employee Data Sheet, indicating Hatfield's annual salary of \$29,120.00 and that she then conferred as to whether the position had received corporate approval and whether the salary was appropriate. Adkins deposition, page 21; Ball deposition, page 47. Atkins testified that she and Ball also investigated the events that led to Hatfield being offered the position. Atkins deposition, pages 29-30.

¹ Campbell testified that Mahaffey did not have authority, without corporate approval, to independently approve any position or pay scale at WMH. Campbell deposition, page 56.

CIVIL ORDER
BOOK

0135 493

12. Atkins testified that over the next couple of days, Atkins and Ball became aware of complaints from various hospital employees regarding Hatfield's employment. Atkins deposition, pages 24-27. Atkins testified that many of the employees who has inquired of Channell about the posted position complained that the pay scale had been misrepresented to them, while others complained that the educational requirements had been misrepresented to them, in light of the fact that Ms. Hatfield did not meet the requirements for a minimum two year college degree. Atkins deposition, page 30; Ferrell deposition, page 10, Smith deposition, page 10. Edwards and Varney testified that they complained because they had been told that they were being considered for the position and had not been made aware that the position was being offered outside the hospital. Edwards deposition, pages 18 and 35; Varney deposition, pages 12-13.
13. Because of the growing dissatisfaction among the WMH employees regarding the conditions under which Hatfield was employed and to insure that a fair process was in place with respect to filling the position, Atkins and Ball conferred with corporate counsel, Kathleen Holloway and jointly decided to terminate Hatfield's employment. Atkins deposition, page 66; Ball deposition, page 29; Campbell deposition, pages 37-38; Holloway deposition, pages 5 and 50. Atkins testified that she directed Channell, as Hatfield's direct supervisor, to inform Hatfield of her termination. Atkins deposition, page 53. Channell testified that pursuant to Atkins' instruction, Channell informed Hatfield of her immediate termination on April 14, 2005. Channell deposition, page 48.
14. Hatfield testified that following her termination, she and her daughter continued to live with Hatfield's fiancé, in Moore's home. Hatfield deposition, pages 6-7. Hatfield testified that she resumed her employment with her previous employer, Psychological Assessment, as an Executive Administrative Assistant at a rate of \$12.00 per hour, in September 2005 and that

CIVIL ORDER
BOOK

0135 494

she collected unemployment benefits between April 2005 and September 2005, until she was rehired with Psychological Assessment. *Id.* at pages 65-68.

15. Hatfield filed this case on May 31, 2005, alleging breach of contract, breach of the duty of good faith and fair dealing, tortious interference with her employment contract and intentional infliction of emotional distress. On July 28, 2005 the Court entered an Order granting summary judgment in favor of the Defendants on Counts I, II and III of the Plaintiff's Amended Complaint. Specifically, the Court found that the employment relationship between Ms. Hatfield and the Hospital was on an at will basis and that Hatfield had not presented even a scintilla of evidence to dispute that her employment with the Hospital was on anything other than an at will basis.
16. Accordingly, the only remaining allegations pertain to Counts IV and V of the Plaintiff's Amended Complaint alleging tortious interference of contract and intentional infliction of emotional distress.
17. Defendants filed the instant Motion for Summary Judgment on January 25, 2007.
18. Plaintiffs filed a response on February 2, 2007.

CONCLUSIONS OF LAW

1. The Court first addresses the standard of review for motion for summary judgment. In West Virginia it is well established that "a motion for summary judgment should be granted only when it is clear that there is no genuine issue of material fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syllabus Point 3, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).
2. "The question to be decided on a motion for summary judgment is whether there is a genuine issue of fact and not how that issue should be determined." Syllabus Point 5,

CIVIL ORDER
BOOK

0135 495

- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).
3. "A party who moves for summary judgment has the burden of showing that there is no genuine issue of fact and any doubt as to the existence of such issue is resolved against the movant for such judgment." Syllabus Point 6, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).
 4. "Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syllabus Point 4, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994).
 5. "Roughly stated, a 'genuine issue' for purposes of West Virginia Rule of Civil Procedure 56 (c) is simply one half of a trialworthy issue, and a genuine issue does not arise unless there is sufficient evidence favoring the non-moving party for a reasonable jury to return a verdict for that party. The opposing half of a trialworthy issue is present where the non-moving party can point to one or more disputed 'material' facts. A material fact is one that has the capacity to sway the outcome of the litigation under the applicable law." Syllabus Point 5, *Jividen v. Law*, 194 W.Va. 705, 461 S.E.2d 451 (1995).
 6. A motion for summary judgment should be granted if the pleadings, exhibits, and discovery depositions upon which motion is submitted for decision disclose that the case involves no genuine issue as to any material fact and that party who made the motion is entitled to judgment as matter of law. *Redden v. Comer*, 200 W.Va. 209, 488 S.E.2d 484 (1997), *Holleran v. Cole*, 200 W.Va. 49, 488 S.E.2d 49 (1997).

CIVIL ORDER
BOOK

0135 496

7. "While the underlying facts and all inferences are viewed in the light most favorable to the nonmoving party, the nonmoving party must nonetheless offer some "concrete evidence from which a reasonable ... [finder of fact] could return a verdict in ... [its] favor" or other "significant probative evidence tending to support the complaint." *Anderson v. Liberty Lobby*, 477 U.S. at 256, 106 S.Ct. at 2514, 91 L.Ed.2d at 217; *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 59-60, 459 S.E.2d 329, 336 - 37 (1995).
8. Plaintiff argues since the Defendant previously moved for summary judgment on Counts I, II and III the Defendant is precluded from moving summary judgment on Counts IV and V since those counts were not included in Defendant's original motion for summary judgment.
9. The Court **FINDS** this argument without merit and the Plaintiff has failed to cite any law supporting this argument.

Tortious Interference With Contract

1. Defendants asserts that the tortious interference with contract claim asserts in Count IV of the Plaintiff's Amended Complaint is legally insufficient because, as a matter of law, a party [WMH's agents and employees] may not interfere with its own contractual relationship and there is no evidence to support Plaintiff's claim that either Ms. Ball or Ms. Atkins were acting outside their authority in terminating Hatfield's employment.
2. The Plaintiff asserts that whether Ms. Atkins and Ms. Ball acted as individuals or as employees of WMH is a question of fact, which must be resolved by the jury. In support of this argument Plaintiff asserts that she was not aware of any other employee's interest in the position, nor was she aware of any irregularities with the position.
3. Plaintiff has not offered any counter affidavits or deposition testimony to support this argument.

CIVIL ORDER BOOK 0135 497

- 4. In Shrewsbury v. National Grange Mut. Ins. Co., 183 W.Va. 322, 325, 395 S.E.2d 745, 748 (1990), the West Virginia Supreme Court of Appeals held that “[i]t is black letter law that no one can be liable for tortious interference with his own contract.”
- 5. In Tiernan v. Charleston Area Medical Center, Inc., 203 W.Va. 135, 506 S.E.2d 578 (1998), the West Virginia Supreme Court of Appeals held that the elements of tortious interference of a contract or business relationship are:

- “1. Existence of a contractual or business relationship or expectancy;
- 2. An intentional act of interference by a party outside that relationship or expectancy;
- 3. Proof that the interference caused the harm sustained;
- and
- 4. Damages.”

- 6. In the instant case it is undisputed that Atkins and Ball were jointly responsible for running the day-to-day operation of WMH at the time of Hatfield’s termination on April 15, 2005. Although, the Plaintiff asserts that there is a genuine issue of material fact as to whether Atkins and Ball were acting within the scope of their employment, even when the evidence is viewed in a light most favorable to the Plaintiff, there is no evidence suggesting that Atkins and Ball were not acting within the scope of their employment and duties as employees of WMH when Hatfield’s employment was terminated. Furthermore, it is undisputed that Atkins and Ball consulted with corporate management of WMH’s parent corporation, HMA, and obtained corporate approval to terminate Hatfield’s employment.
- 7. Therefore, WMH, who was a party to the employment relationship with Hatfield, cannot be held liable for allegedly interfering with its own contract or business relationship with Hatfield. Furthermore, Atkins and Ball who were employees of WMH and acting within the scope of their duties in running WMH’s day-to-day operations, that included the authority to

CIVIL ORDER
BOOK

0135 498

terminate, cannot be liable, as a matter of law, for the alleged tortious interference with the employment relationship between WMH and Hatfield.

8. Accordingly, based upon the findings of fact and conclusions of law contained herein, the Court hereby **GRANTS** Defendant's Motion for Summary Judgment on Count IV of Plaintiff's Amended Complaint.

Intentional Infliction of Emotional Distress

1. Defendant asserts that Count V of Plaintiff's Amended Complaint is also legally insufficient, because there is no evidence by which the Court can conclude that any of the Defendant's conduct could reasonably be considered so extreme and outrageous as to amount to an intentional infliction of emotional distress.
2. The Plaintiff asserts that the elements of intentional infliction of emotional distress are met due to the fact that the Defendants did not have the decency or courtesy to discuss the Plaintiff's employment situation with her, then terminated her in a manner calculated in inflict emotional distress upon her.
 3. In Travis v. Alcon Lab., Inc., 202 W.Va. 369, 375, 504 S.E.2d 419, 425 (1998), the West Virginia Supreme Court stated that the following elements must be proved in order to recover for an intentional infliction of emotional distress claim:
 - “1. That the defendant's conduct was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency;
 2. That the defendant acted with the intent to inflict emotional distress, or acted recklessly when it was certain or substantially certain emotional distress would result from his conduct;
 3. That the actions of the defendant caused the plaintiff to suffer emotional distress; and
 4. That the emotional distress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it.”
4. “It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery...” Id. at 427.

CIVIL ORDER
BOOK

0135 499

5. In Tanner v. Rite Aid of West Virginia, Inc., 194 W.Va. 643, 461 S.E.2d 149 (1995), the

West Virginia Supreme Court of Appeals defined the conduct envisioned by the terms

“extreme and outrageous”, stating:

“It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by ‘malice’, or a degree of aggravation which would entitle the plaintiff to damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘outrageous!’”

6. The Plaintiff asserts that the Defendants acted intentionally or recklessly toward the Plaintiff because the Defendants did not inform the Plaintiff that there were any problems with her employment, even as they intended to terminate her and that according to Kathleen Holloway, the Defendants did not present the Plaintiff with an opportunity to remain in her position at a reduced rate of pay.
7. The Court FINDS that there is no evidence in the case that the Plaintiff had any discussions with either Atkins or Ball regarding her termination and there is no evidence that any agent or employee of WMH made any derogatory or inappropriate statements directed toward the Plaintiff with respect to her employment or termination. Furthermore, there is no evidence that any of the Defendants publicly ridiculed, verbally abused, harassed or made any accusations against the Plaintiffs. While there may have been a more congenial way to terminate the employment, Atkins and Ball terminated Hatfield’s employment without engaging in any type of conduct that could even remotely be considered outrageous. If the Court were to adopt Plaintiff’s argument that the elements of intentional infliction of

CIVIL ORDER
BOOK

0135 500

emotional distress are met simply because the Defendants did not inform the Plaintiff that there were any problems with her employment, the "floodgates" would essentially be open to allow conduct that is clearly not "outrageous" to be considered "outrageous" in a legal sense. Plaintiff wants the Court to equate "silence" toward her as amounting to the requirement of outrageous conduct. However, in this case "silence" did not result in outrageous conduct nor does it create a genuine issue of material fact. At most, it appears that the Plaintiff may have been embarrassed as a result of the termination of her employment with WMH. However, embarrassment is not the type of emotional distress contemplated as damages for recovery for the tort of intentional infliction of emotional distress. Therefore, the Court **FINDS** that there is no evidence by which a jury could reasonably find that the Plaintiff suffered emotional distress so severe that a reasonable person could not be expected to endure it.

9. Accordingly, based upon the findings of fact and conclusions of law contained herein, the Court hereby **GRANTS** Defendant's Motion for Summary Judgment on Count V of Plaintiff's Amended Complaint.

JUDGMENT

WHEREFORE, based upon the foregoing the Court does hereby **ORDER** that the Defendants, Health Management Associates of West Virginia's Motion for Summary Judgment is hereby **GRANTED**. This being a **FINAL ORDER**, which any party may appeal, the Clerk is hereby **ORDERED** to strike this case from the active docket of this Court, and shall mail an attested copy of this Order to the parties herein.

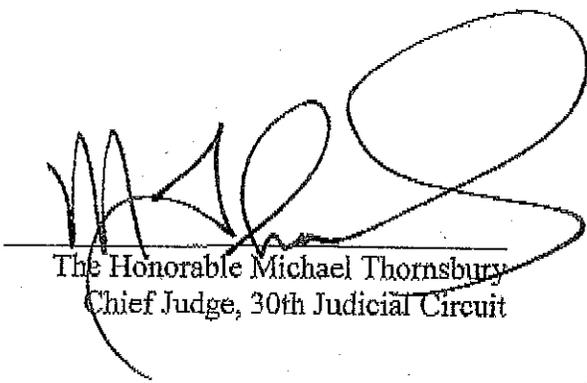
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CIVIL ORDER
BOOK

0135 501

ENTERED this the 7th day of February 2007.



The Honorable Michael Thornsbury
Chief Judge, 30th Judicial Circuit